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PTO/SB/21 (07-06)

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**TRANSMITTAL
FORM**

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Total Number of Pages in This Submission

20



Application Number

10/602,459

Filing Date

June 23, 2003

First Named Inventor

David P. Paradis

Art Unit

1771

Examiner Name

Matthew D. Matzek

Attorney Docket Number

H0005624-4580/H9940-0505

ENCLOSURES (Check all that apply)

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/
Incomplete ApplicationReply to Missing Parts
under 37 CFR 1.52 or 1.53

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a
Provisional ApplicationPower of Attorney, Revocation
Change of Correspondence Address

Terminal Disclaimer



Request for Refund



CD, Number of CD(s) _____



Landscape Table on CD



After Allowance Communication to TC

Appeal Communication to Board
of Appeals and InterferencesAppeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify
below):

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Euchalter Nemer, A Professional Law Corporation

Signature

Printed name

Sandra P. Thompson

Date

October 26, 2006

Reg. No.

46,264

CERTIFICATE OF TRANSMISSION/MAILING

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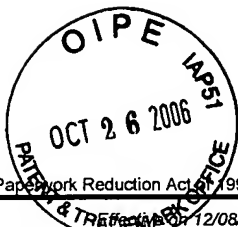
Pia S. Kamath

Date

October 26, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (07-06)

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**
For FY 2006☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$)**500.00****Complete if Known**

Application Number	10/602,459
Filing Date	June 23, 2003
First Named Inventor	Paradis, et al.
Examiner Name	Matthew D. Matzek
Art Unit	1771
Attorney Docket No.	H0005624-4580/H9940-0505

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: **500977** Deposit Account Name: **Buchalter Nemer**

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s)
under 37 CFR 1.16 and 1.17☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

200	100
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Multiple dependent claims

360	180
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=	

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=	

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEES(S)

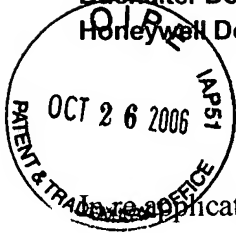
Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)Other (e.g., late filing surcharge): **Appeal Brief****\$500.00****SUBMITTED BY**

Signature	<i>Sandra P. Thompson</i>	Registration No. (Attorney/Agent) 46,264	Telephone (949) 760-1121
Name (Print/Type)	Sandra P. Thompson		Date October 26, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Paradis et al.

Application No.: 10/602,459

Group No.: 1771

Filed: June 23, 2003

Examiner: Matthew D. Matzek

For: FIBER AND YARN BLENDS, METHODS OF PRODUCTION AND APPLICATIONS THEREOF

MAIL STOP APPEAL BRIEF – PATENTS
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ALEXANDRIA, VA 22313-1450

APPELLANT'S BRIEF UNDER 37 CFR § 41.37

This brief follows the appellant's Notice of Appeal filed in this case on August 30, 2006.
The fees required under 37 CFR §1.17(f) are included with this brief.

This brief contains the following items under the headings in the order here indicated:

APPELLANTS BRIEF UNDER 37 CFR § 41.37

REAL PARTY IN INTEREST

RELATED APPEALS AND INTERFERENCES

STATUS OF THE CLAIMS

STATUS OF AMENDMENTS

SUMMARY OF CLAIMED SUBJECT MATTER

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

ARGUMENT

CLAIMS APPENDIX

EVIDENCE APPENDIX

RELATED PROCEEDINGS APPENDIX

REAL PARTY IN INTEREST

The real party in interest is the assignee, Honeywell International Inc. (see Reel/Frame No. 014336/0277, Recorded on February 12, 2004)

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences in this matter known to appellant.

STATUS OF THE CLAIMS

There are 27 claims in this case.

Claims 27-56 and 58-59 were cancelled in Response to the Restriction Requirement entered on April 18, 2005 by Examiner's Amendment.

Claims 1-26 and 57 are pending.

STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the advisory action received on August 25, 2006 in this matter. This advisory action was in response to a Response After Final filed on July 31, 2006.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The claimed subject matter is directed to a fiber material that includes: a) a first base fiber component comprising a first denier and a first luster component (page 4, lines 1-8 and 22-29, page 5 in its entirety, and page 6, lines 1-5); b) a second base fiber component comprising a second denier and a second luster component, wherein the first denier and the second denier are different and wherein the first luster component and the second luster component are different (page 4, lines 1-8 and 22-29, page 5 in its entirety, and page 6, lines 1-5); and c) a plurality of binder fibers (page 6, lines 6-14).

In addition, the claimed subject matter is directed to methods that teach that a fiber material may be produced that includes: a) providing a first base fiber component comprising a first denier and a first luster component (page 4, lines 1-8 and 22-29, page 5 in its entirety, and page 6, lines 1-5); b) providing a second base fiber component comprising a second denier and a second luster component, wherein the first denier and the second denier are different and wherein the first luster component and the second luster component are different (page 4, lines 1-8 and 22-29, page 5 in its entirety, and page 6, lines 1-5); c) providing a plurality of binder fibers (page 6, lines 6-14); and d) blending the first base fiber, the second base fiber and at least some of the plurality of binder fibers to form the fiber material (page 9, lines 9-29).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-10, 19-26 and 57 are rejected under 35 USC 103(a) as being unpatentable over Miller et al. (US 2003/0165656) in view of Grindstaff (US 5188892).

Claims 11-18 are rejected under 35 USC 103(a) as being unpatentable over Miller et al. (US 2003/0165656) in view of Grindstaff (US 5188892) as applied to claim 1, and further in view of Kobsa et al. (US 4559196).

ARGUMENT

ISSUE NO. 1 - §103 (A) REJECTION OF CLAIMS 1-10, 19-26 and 57

Claim 1 recites:

“A fiber material, comprising:

a first base fiber component comprising a first denier and a first luster component;

a second base fiber component comprising a second denier and a second luster component, wherein the first denier and the second denier are different and wherein the first luster component and the second luster component are different; and

a plurality of binder fibers.”

As recited in the claim, there are two base fiber components – each having a denier and a luster component, whereby the individual deniers and luster components are different. This difference in denier and luster components is novel and contributes to the superior quality of the products produced by the subject matter of the present application.

The Miller publication teaches a conventional carpet fiber and a binder material, wherein the yarn is subject to singeing to remove protruding fiber ends, and subjected to heat sufficient to melt the binder fiber. The Miller publication – as the Examiner admits – is silent as to the use of mixed denier and different luster components.

The Examiner contends that:

“Applicant is correct is making the assertion that Grindstaff teaches that dyeing may not be needed to distinguish the differing denier fibers. Grindstaff teaches that if two different denier fibers can be distinguished by their differing luster then it is not necessary

to dye the different fibers varying colors (col. 6, line 66-col. 7, line 5). However, if it is not possible to distinguish the two different fibers then they may be dyed different colors as described in col. 6, lines 35-56. Therefore, the Grindstaff reference teaches that the two different denier fibers are either to be distinguishable due to a difference in luster or to be dyed to provide clear distinction.” (Final Office Action, May 30, 2006, page 6, “Response to Arguments” Section).

The Applicants believe again that the Examiner is reading too much into the Grindstaff reference. The section that the Examiner points to in the Final Office Action (Cols. 6 and 7) is where Grindstaff states how DFI or degree of filament intermingling is measured. Fibers can be dyed if they aren’t otherwise indistinguishable (by size/denier, luster or melting point); however, this section does not talk about using those fibers in products, but instead discusses only the calculation of DFI and how it is facilitated. In addition, the DFI calculation certainly does not advocate or teach a mixed denier fiber, especially given that it shows how to get a DFI of about 95% (presumably not much difference in denier) or 56% (presumably a difference in denier). In fact, it only states that it measures mixed fibers – which can mean that there are two types of fibers with similar or the same deniers – where in this case, each fiber must be dyed to detect the difference between the different fibers. The Grindstaff reference states in relation to the DFI measurement: “Alternately, if the two types of filaments can be distinguished without dyeing, then the dyeing step can be omitted.” (Col. 6, lines 66-68). So, the point to calculating DFI is that the instrumentation needs to be able to distinguish between the two types of filaments by some means – different, denier, different color, different luster, different melting point, etc. There is absolutely no teaching that the fibers should have two different deniers each having a different luster, it is merely a tutorial on how to calculate DFI. Then, in column 7, Grindstaff follows that tutorial by clearly stating that if the two deniers are different (one is distinctly smaller than the other), then nothing needs to be done to the fibers to measure the DFI, because the instrumentation will detect the size differences.

The Grindstaff reference does not cure the deficiencies of the Miller publication for the following reasons. First, the Grindstaff reference teaches that the polyester fibers – despite being different deniers – are otherwise similar, e.g. in color and may be cut to a uniform length of staple. (See Column 4, lines 30-33). Second, the Applicant again contends that the Examiner is misreading the Grindstaff reference. The Grindstaff reference is not teaching different luster components or color components, but is in fact teaching away from different luster components and/or color components. Grindstaff states that where normally different luster components or color components need to be used to distinguish different fibers in a carpet yarn, in the Grindstaff patent, the different deniers are visibly obvious and therefore, no color or luster differential needs to be initiated. (See Column 7, lines 8-16). Specifically, Grindstaff states: “unlike heather continuous filament yarns, for which the filaments must be colored to distinguish them, the DFI relates to the degree of intermingling of fibers of different deniers. Since the fiber of smaller denier is distinctly smaller of the fiber of larger denier, the difference will be immediately apparent, and **there is no need to color the fibers.**” (emphasis added). The Examiner points to Column 16 to show how Grindstaff discusses delustrant – but this reference is similar to those cited in the previous Office Action by the Examiner in that it isn’t relevant to the question of whether Grindstaff considered multiple luster components – which he clearly didn’t. In addition, the discussion of DFI supports the contention of the Applicants, in that, where the fibers are not otherwise distinguishable – other distinguishing factors need to be used or created in order to measure the different fibers. So, if two sets of fibers have different deniers, presumably, nothing more needs to be done to distinguish those fibers for DFI calculation purposes.

Therefore, the Applicant contends that the Grindstaff reference, in combination with the Miller publication, will not yield the subject matter of the present application, since its the multiple denier and luster components that provide the novelty of the fiber material. The Examiner needs to provide more information as to how one of ordinary skill in the art would read the teachings in Grindstaff, ignore the teachings regarding no color differential needed, and combine it with the Miller publication to arrive at the present application that requires both denier and luster differentials.

Buchalter Docket No.: H9940-0505
Honeywell Docket No.: H0005624 - 4580

Based on this argument, claim 1 is allowable as being patentable over the Miller publication in view of Grindstaff. In addition, claims 2-10, 19-26 and 57 are also allowable as being patentable over the Miller publication in view of Grindstaff by virtue of their dependency on claim 1.

ISSUE NO. 2 - §103 (A) REJECTION OF CLAIMS 11-18 AS APPLIED TO CLAIM 1

Claim 1 recites:

“A fiber material, comprising:

a first base fiber component comprising a first denier and a first luster component;

a second base fiber component comprising a second denier and a second luster component, wherein the first denier and the second denier are different and wherein the first luster component and the second luster component are different; and

a plurality of binder fibers.”

As recited in the claim, there are two base fiber components – each having a denier and a luster component, whereby the individual deniers and luster components are different. This difference in denier and luster components is novel and contributes to the superior quality of the products produced by the subject matter of the present application.

The Miller publication teaches a conventional carpet fiber and a binder material, wherein the yarn is subject to singeing to remove protruding fiber ends, and subjected to heat sufficient to melt the binder fiber. The Miller publication – as the Examiner admits – is silent as to the use of mixed denier and different luster components.

The Examiner contends that:

“Applicant is correct is making the assertion that Grindstaff teaches that dyeing may not be needed to distinguish the differing denier fibers. Grindstaff teaches that if two different denier fibers can be distinguished by their differing luster then it is not necessary

to dye the different fibers varying colors (col. 6, line 66-col. 7, line 5). However, if it is not possible to distinguish the two different fibers then they may be dyed different colors as described in col. 6, lines 35-56. Therefore, the Grindstaff reference teaches that the two different denier fibers are either to be distinguishable due to a difference in luster or to be dyed to provide clear distinction.” (Final Office Action, May 30, 2006, page 6, “Response to Arguments” Section).

The Applicants believe again that the Examiner is reading too much into the Grindstaff reference. The section that the Examiner points to in the Final Office Action (Cols. 6 and 7) is where Grindstaff states how DFI or degree of filament intermingling is measured. Fibers can be dyed if they aren’t otherwise indistinguishable (by size/denier, luster or melting point); however, this section does not talk about using those fibers in products, but instead discusses only the calculation of DFI and how it is facilitated. In addition, the DFI calculation certainly does not advocate or teach a mixed denier fiber, especially given that it shows how to get a DFI of about 95% (presumably not much difference in denier) or 56% (presumably a difference in denier). In fact, it only states that it measures mixed fibers – which can mean that there are two types of fibers with similar or the same deniers – where in this case, each fiber must be dyed to detect the difference between the different fibers. The Grindstaff reference states in relation to the DFI measurement: “Alternately, if the two types of filaments can be distinguished without dyeing, then the dyeing step can be omitted.” (Col. 6, lines 66-68). So, the point to calculating DFI is that the instrumentation needs to be able to distinguish between the two types of filaments by some means – different, denier, different color, different luster, different melting point, etc. There is absolutely no teaching that the fibers should have two different deniers each having a different luster, it is merely a tutorial on how to calculate DFI. Then, in column 7, Grindstaff follows that tutorial by clearly stating that if the two deniers are different (one is distinctly smaller than the other), then nothing needs to be done to the fibers to measure the DFI, because the instrumentation will detect the size differences.

The Grindstaff reference does not cure the deficiencies of the Miller publication for the following reasons. First, the Grindstaff reference teaches that the polyester fibers – despite being different deniers – are otherwise similar, e.g. in color and may be cut to a uniform length of staple. (See Column 4, lines 30-33). Second, the Applicant again contends that the Examiner is misreading the Grindstaff reference. The Grindstaff reference is not teaching different luster components or color components, but is in fact teaching away from different luster components and/or color components. Grindstaff states that where normally different luster components or color components need to be used to distinguish different fibers in a carpet yarn, in the Grindstaff patent, the different deniers are visibly obvious and therefore, no color or luster differential needs to be initiated. (See Column 7, lines 8-16). Specifically, Grindstaff states: “unlike heather continuous filament yarns, for which the filaments must be colored to distinguish them, the DFI relates to the degree of intermingling of fibers of different deniers. Since the fiber of smaller denier is distinctly smaller of the fiber of larger denier, the difference will be immediately apparent, and **there is no need to color the fibers.**” (emphasis added). The Examiner points to Column 16 to show how Grindstaff discusses delustrant – but this reference is similar to those cited in the previous Office Action by the Examiner in that it isn’t relevant to the question of whether Grindstaff considered multiple luster components – which he clearly didn’t. In addition, the discussion of DFI supports the contention of the Applicants, in that, where the fibers are not otherwise distinguishable – other distinguishing factors need to be used or created in order to measure the different fibers. So, if two sets of fibers have different deniers, presumably, nothing more needs to be done to distinguish those fibers for DFI calculation purposes.

Kobsa does not cure this defect in Grindstaff, because Kobsa only discloses a new method of dying carpets. Therefore, although Kobsa may combine with Grindstaff or the Miller publication to show how the fibers in Grindstaff or Miller may be dyed in a new method, Grindstaff and Miller do not disclose the combination of two base fiber components – where each base fiber component has a denier and a luster component different from that of the other base fiber component.

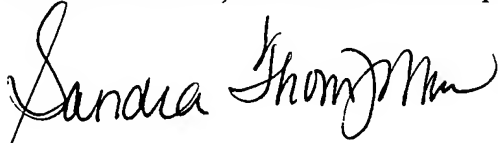
Therefore, the Applicant contends that the Grindstaff reference, in combination with the Miller publication and the Kobsa reference, will not yield the subject matter of the present application, since its the multiple denier and luster components that provide the novelty of the fiber material. The Examiner needs to provide more information as to how one of ordinary skill in the art would read the teachings in Grindstaff, ignore the teachings regarding no color differential needed, and combine it with the Miller publication and the Kobsa reference to arrive at the present application that requires both denier and luster differentials.

Based on this argument, claim 1 is allowable as being patentable over the Miller publication in view of Grindstaff and further in view of Kobsa. In addition, claims 11-18 are also allowable as being patentable over the Miller publication in view of Grindstaff and further in view of Kobsa by virtue of their dependency on claim 1.

Dated: 10/26/2006

Respectfully submitted,

Buchalter Nemer, A Professional Corp.

By: 

Sandra P. Thompson, PhD, Esq.

Reg. No. 46,264

E-mail: sthompson@buchalter.com

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APPENDIX OF PENDING CLAIMS

1. (Original) A fiber material, comprising:

a first base fiber component comprising a first denier and a first luster component;

a second base fiber component comprising a second denier and a second luster component, wherein the first denier and the second denier are different and wherein the first luster component and the second luster component are different; and

a plurality of binder fibers.
2. (Original) The fiber material of claim 1, wherein at least some of the binder fibers comprises a synthetic material.
3. (Original) The fiber material of claim 2, wherein the synthetic material comprises a polyamide-based compound.
4. (Original) The fiber material of claim 3, wherein the polyamide-based compound comprises nylon-6.
5. (Original) The fiber material of claim 3, wherein the polyamide-based compound comprises nylon-6,6.
6. (Original) The fiber material of claim 3, wherein the polyamide-based compound comprises nylon-12.
7. (Currently Amended) The fiber material of claim 1, wherein the fiber material comprises less than about 2.5 weight percent ~~of the plurality of binder fibers~~.
8. (Currently Amended) The fiber material of claim 7, wherein the fiber material comprises less than about 2 weight percent ~~of the plurality of binder fibers~~.

9. (Currently Amended) The fiber material of claim 8, wherein the fiber material comprises less than about 1.5 weight percent ~~of the plurality of~~ binder fibers.
10. (Currently Amended) The fiber material of claim 9, wherein the fiber material comprises less than about 1 weight percent ~~of the plurality of~~ binder fibers.
11. (Original) The fiber material of claim 1, wherein the first luster component is less than about .45% TiO₂.
12. (Original) The fiber material of claim 11, wherein the first luster component is less than about .25% TiO₂.
13. (Original) The fiber material of claim 12, wherein the first luster component is less than about .15% TiO₂.
14. (Original) The fiber material of claim 13, wherein the first luster component is less than about .1 % TiO₂.
15. (Original) The fiber material of claim 1, wherein the second luster component is less than about .45% TiO₂.
16. (Original) The fiber material of claim 15, wherein the second luster component is less than about .25% TiO₂.
17. (Original) The fiber material of claim 16, wherein the second luster component is less than about .15% TiO₂.
18. (Original) The fiber material of claim 17, wherein the second luster component is less than about .1 % TiO₂.
19. (Original) The fiber material of claim 1, wherein the first denier is from about 6 to about 12.

20. (Original) The fiber material of claim 1, wherein the second denier is from about 6 to about 12.
21. (Original) The fiber material of claim 19, wherein the first denier is less than about 12.
22. (Original) The fiber material of claim 21, wherein the first denier is less than about 7.
23. (Original) The fiber material of claim 22, wherein the first denier is 6.5.
24. (Original) The fiber material of claim 20, wherein the second denier is less than about 12.
25. (Original) The fiber material of claim 24, wherein the second denier is 10.
26. (Original) The fiber material of claim 24, wherein the second denier is less than about 7.

Claims 27-56: Canceled.

57. (Original) A yarn product comprising the fiber material of claim 1.

Claims 58-59: Canceled.

EVIDENCE APPENDIX

There is no additional evidence submitted during this Appeal brief.

RELATED APPEALS AND INTERFERENCES APPENDIX

There are no other appeals or interferences in this matter known to appellant, and therefore, there are no additional attachments under this heading.